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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 41660
Plaintiff-Respondent,)	
)	Kootenai Co. Case No.
vs.)	CR-2008-12522
)	
JEFFREY ALAN DENNY,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE LANSING L. HAYNES
District Judge**

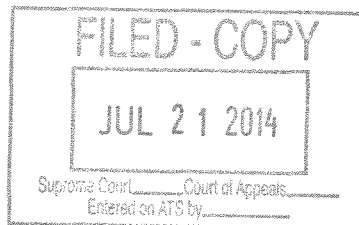
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STATEMENT OF THE CASE

Nature Of The Case

Jeffrey Alan Denny appeals from the district court's order denying his third motion for credit for time served.

Statement Of Facts And Course Of Proceedings

In July 2008, the state charged Denny with receiving or transferring a stolen vehicle and possession of a controlled substance. (R., pp.30-31.) These charges were the result of an "attempt to locate" "out of Washington State." (R., p.16.) Law enforcement located the vehicle "parked and running," with the driver, later identified as Denny, leaving the car to use a "porta potty." (R., p.16.) Denny had a "small baggy" and syringe in his pocket, "was difficult to talk too [sic] and at times was hard to understand," but he admitted taking the vehicle. (R., pp.16-17.)

Pursuant to a plea agreement, Denny pled guilty to possession of a controlled substance and the state dismissed the remaining charge. (R., pp.41-44, 46-48.) The court imposed a unified seven-year sentence with three years fixed and retained jurisdiction. (R., pp.52-57.) At the conclusion of the jurisdictional review period, the court placed Denny on probation for three years. (R., pp.62-66.)

On October 7, 2011, the state filed a Report of Probation Violation alleging Denny violated his probation by committing the crime of felon in possession of a firearm (which he was arrested for in Washington), failing to complete community service, moving to Washington without permission, using

methamphetamine, failing to pay court costs, and failing to pay restitution. (R., pp.85-88.) Because Denny was in custody in Washington when the Report of Probation Violation was filed, and was not arrested on the bench warrant issued pursuant to that report until December 7, 2012, the probation violation allegations were not resolved until January 3, 2013. (See R., pp.85-96, 127, 132.) At that hearing, the state agreed to withdraw the first allegation (that Denny unlawfully possessed a firearm) and Denny admitted the remaining allegations. (R., p.132.) The court revoked Denny's probation and again retained jurisdiction. (R., pp.134-136.) On April 25, 2013, at the conclusion of the second review period, the court relinquished jurisdiction. (R., pp.140-141.)

Three months later, Denny filed a motion requesting credit for time served along with a supporting affidavit. (R., pp.143-146.) In his affidavit, Denny asked to receive credit for the "year" between his "original[] arrest[] in April of 2008" and his "release[] on probation on or about April 13th, 2009." (R., p.145.) Denny also requested credit for time he was in the Spokane County Jail after the October 7, 2011 Report of Probation Violation was filed. (R., p.146.) The court granted Denny's motion to the extent it awarded credit for the following time Denny spent in custody: (1) 143 days for time served between Denny's arrest on June 20, 2008, and his release on probation on April 13, 2009, and (2) 136 days for time served between Denny's December 7, 2012 arrest on the bench warrant to imposition of sentence on April 22, 2013. (R., p.148.)

One month later, Denny filed a second motion for credit for time served with another affidavit. (R., pp.150-153.) In this motion, Denny again requested credit for the time he spent in the Spokane County Jail. (R., p.152.)

In response to Denny's second motion, the district court wrote a letter to Denny, advising him:

No further credit for time served can be granted beyond the order dated August 8, 2013. A person held in another jurisdiction on a warrant from Kootenai County, Idaho, can be given credit for that time only if the only document keeping that person in custody is the Kootenai County warrant. The fourteen (14) months you reference in your most recent motion and affidavit was time served for another state's convictions for Possession of Stolen Property and 2nd Degree Robbery (per your statement at the January 3, 2013, probation violation hearing). Thus, you cannot be given credit for those fourteen (14) months toward your Idaho sentence.

(R., p.158.)

After receiving the court's letter, Denny filed another affidavit, stating:

On 10-3-11 I was arrested and held in Spokane County Jail for 30 days on a probation violation for my Washington probation. On 10-11-11 I was notified that Idaho issued a warrant for a probation violation and was therefore unable to gain release through bond or otherwise until I was transported to Kootenai [County] on 12-7-12 despite the expiration of the 30 day sentence imposed by Washington on or about 11-2-11. Pursuant to Idaho Code 18-309 I am entitled to be credited about 13 months on the charge Idaho violated me on.

On January 3, 2012 I made a statement at the probation hearing . . . during a state of mental confusion due to changes in psychotropic medications I take that were made by the medical staff at Kootenai County Jail after I was transported there from Spokane County Jail. These statements were incorrect and should not be used against me. I was only sentenced by Washington to 30 days on the convictions of possession of stolen property and 2nd degree robbery and the warrant issued by Kootenai County made it impossible for me to get out and kept me in custody for another 13 months past the Washington sentence. I therefore ask this matter to be investigated and I be credited the remaining 13 months that I

was made to serve until I was transported to Kootenai County on December 7, 2012.

(R., p.155 (capitalization altered).)

Along with his affidavit, Denny filed his third motion for credit for time served. (R., p.159.) The court denied the motion. (R., p.161.) Denny filed a notice of appeal timely only from the court's order denying his third motion for credit for time served. (R., pp.174-178.)

ISSUE

Denny states the issue on appeal as:

Did the district court err when it denied Mr. Denny's third motion for credit for time served?

(Appellant's Brief, p.7.)

The state rephrases the issue as:

Has Denny failed to show the district court erred in denying his third request for credit for time served?

ARGUMENT

Denny Has Failed To Show Error In The Denial Of His Third Request For Credit For Time Served

A. Introduction

Denny challenges the denial of his third motion for credit for time served, arguing that although he is “[m]indful of I.C. § 19-2603” he believes he is nevertheless “entitled to be credited about 13 months.” (Appellant’s Brief, p.8.) As implied by Denny’s “mindful” argument, the law and the facts do not support his claim of error.

B. Standard Of Review

“The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts.” State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)). The appellate courts “defer to the trial court’s findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous.” State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006) (citing State v. Davis, 139 Idaho 731, 734, 85 P.3d 1130, 1133 (Ct. App. 2003)).

C. The Record Supports The District Court’s Order Denying Denny’s Third Motion For Credit For Time Served

The award of credit for time served is governed by I.C. § 18-309, which provides in relevant part:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to the entry of judgment, *if such incarceration was for the offense or an included offense for which the judgment was entered.* The remainder of the term commences upon the pronouncement of the sentence

(Emphasis added). The italicized phrase means that the right to credit is conferred only if the prejudgment incarceration is a consequence of or attributable to the charge or conduct for which the sentence is imposed. State v. Horn, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct. App. 1993); State v. Hale, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989). Accordingly, when a defendant seeks credit for prejudgment incarceration, “the applicable inquiry is whether the incarceration was for the same offense or an included offense for which the judgment was entered.” State v. McCarthy, 145 Idaho 397, 399, 179 P.3d 360, 362 (Ct. App. 2008) (citing I.C. § 18-309; State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005)); see also I.C. § 20-209A (“A person who is sentenced may receive credit toward service of his sentence for time spent in physical custody pending trial or sentencing, or appeal, *if that detention was in connection with the offense for which the sentence was imposed.*” (emphasis added)). “If a particular period of confinement served prior to the imposition of sentence is not attributable to the charge or conduct for which a sentence is to be imposed, the offender is not entitled to credit for such confinement; neither does the sentencing judge err by denying credit under such circumstances.” State v. Hale, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989) (citations omitted).

Applying the plain language of I.C. § 18-309 to the facts of this case, the district court correctly concluded Denny is not entitled to credit toward his Idaho sentence for any time he spent in custody in the Spokane County Jail between his October 3, 2011 Washington arrest for “nuisance” and unlawful possession of a firearm (R., p.90), and his December 7, 2012 arrest on the Idaho bench warrant. Denny’s argument to the contrary is based on his assertion that he was “notified that Idaho issued a warrant for a probation violation” on October 11, 2011, and his claim that “[t]he sentence for his Washington State probation violation was only 30 days, and it expired on or about November 2, 2011,” but, because of the bench warrant, he was “‘unable to gain release’ until he was transported to Kootenai County on December 7, 2012.” (Appellant’s Brief, pp.9-10.) Denny’s arguments are without merit.

The start date for calculating Denny’s credit for time served is the date of his arrest on the Idaho bench warrant. State v. McCarthy, 145 Idaho 397, 398, 179 P.3d 360, 361 (Ct. App. 2008) (“credit must be given for jail incarceration after arrest for a probation violation”) (emphasis omitted). That date was December 7, 2012, and the district court correctly based its calculation of credit for time served using that date. (R., p.148.) Denny cites no legal authority to support the proposition that he begins receiving credit for time served when he is “notified” that a bench warrant exists. (See generally Appellant’s Brief, pp.8-9.) And, such a claim is contrary to existing law. McCarthy, *supra*.

Denny’s argument that he would have been released from the Spokane County Jail “on or about November 2, 2011,” after serving “30 days” for his

Washington probation violation, but for the existence of the Idaho bench warrant, is contrary to the record and logic. The record shows that, on October 3, 2011, Denny was placed in custody in Washington as a result of his arrest for “nuisance” and unlawful possession of a firearm. (R., pp.90-91, 108.) At the time of his arrest, Denny was also on probation in Washington for possession of a stolen vehicle and 2nd degree robbery. (R., p.126; see Tr., p.12, Ls.17-20.) While Denny may have been required to serve 30 days as a result of violating his Washington probation due to his arrest on new charges, that was not the only basis for his incarceration in Washington; he also had new criminal charges pending. As his attorney noted at the January 3, 2013 disposition hearing, the unlawful possession charge remained pending for “almost a year after he was arrested on it,” before Washington supposedly decided to dismiss it.¹ (Tr., p.16, Ls.10-24.) Logic also dictates that Washington did not house Denny for a year waiting for Idaho to get around to transporting him; and the record indicates that was not the case. While Denny may think it is “unfair” that he was incarcerated in Spokane on a charge that was eventually dismissed (Tr., p.16, Ls.21-24), that is irrelevant to whether he is entitled to credit for time served in Idaho. He is only entitled to credit from the date of his arrest on the bench warrant, and he received all the credit he is due.

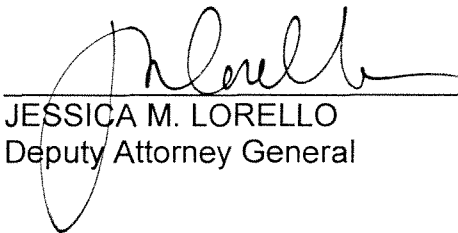
¹ Although Denny complained about the district court’s reliance on statements he made at the January 3, 2013 hearing (R., p.155), he does not reiterate this complaint on appeal, presumably because the district court did not need to rely on Denny’s statements in order to deny his request. The court only needed to calculate the credit based on the date of Denny’s arrest on the bench warrant, which date is undisputed. (Appellant’s Brief, p.5 n.3.)

Because the district court correctly denied Denny's third motion for credit for time served, Denny has failed to show any basis for reversal.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Denny's third motion for credit for time served.

DATED this 21st day of July 2014.

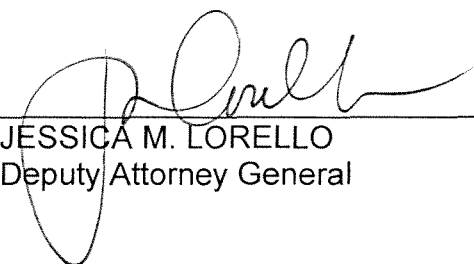

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of July 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.


JESSICA M. LORELLO
Deputy Attorney General